# OF THE STATE OF CALIFORNIA



Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

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Rulemaking 04-04-003

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities. Rulemaking 04-04-025

### NOTICE OF EX PARTE COMMUNICATION

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## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning. Rulemaking 04-04-003

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities. Rulemaking 04-04-025

#### NOTICE OF EX PARTE COMMUNICATION

Pursuant to Rule 8 of the Rules of Practice and Procedure of the California

Public Utilities Commission, the Cogeneration Association of California<sup>1</sup> and the Energy

Producers and Users Coalition<sup>2</sup> (jointly CAC/EPUC), submit this notice. This notice

describes the following ex parte communication in the above-referenced consolidated proceedings.

On November 19, 2007, Michael Alcantar, counsel to CAC/EPUC met with Andrew Schwartz, advisor to President Peevey from approximately 1:30 to 2:00 pm.

<sup>&</sup>lt;sup>1</sup> CAC represents the power generation, power marketing and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: BP America Inc. (including Atlantic Richfield Company), Chevron U.S.A. Inc., ConocoPhillips Company, Shell Oil Products US, THUMS Long Beach Company, Occidental Elk Hills, Inc., and Valero Refining Company - California.

Also in attendance was Elizabeth Stolzfus of the CPUC's Energy Division. The meeting was held at the Commission's office in San Francisco and was initiated by counsel for CAC/EPUC. A follow-up communication to address the same issues occurred on November 21, 2007.

Implementation issues related to the firm capacity contract extensions for expired and expiring firm capacity CHP/QF generators from D.07-09-040 were presented. The issues addressed were: the specific designation of price and non-price terms that may be subject to change in the extension contracts; the eligibility of previously terminated firm capacity CHP/QF generators to reinstate pre-existing firm capacity non-price terms and conditions; and the Commission's possible role in addressing mediation of disputes over contract issues.

Communications regarding a utility's position on specific performance and capacity provisions under the extension agreements were presented for two projects – Watson Cogeneration Company and Sycamore Cogeneration Company. Materials identifying the former firm capacity contract status of four projects, Mid-Set Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company and Coalinga Cogeneration Company were provided and are attached to this Notice. In addition four passages from D.07-09-040<sup>3</sup> and quoted

P. 126 – In recognition of the often lengthy process involved in negotiating contract terms, we will adopt CAC/EPUC's recommendation for existing firm capacity QF resources whose contracts expire before the contracts required by this decision are available. The QF may extend the non-price terms and conditions of the expiring contract and continue service with the pricing set forth in this Decision until the final contract is available.

P. 148 – FOF 45. It is reasonable to extend our prospective QF Program contract options to QFs that are, or were, on contract extensions approved in D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009.

passages from CAC/EPUC's September 17, 2007 reply comments (p. 2-3) on the Alternate Decision regarding the extension agreement petition were presented.

To request a copy of this notice, or any written materials, please contact:

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Respectfully submitted,

Michael Alcantar Counsel to the

Cogeneration Association of California and the

**Energy Producers & Users Coalition** 

November 26, 2007

P. 148 – FOF 46. It is reasonable to allow QFs with expiring contracts to extend the non-price terms of their agreements and continue to provide service under the pricing set forth in this decision until such time as the prospective QF Program contracts options are available.

P. 150 - COL 20. The prospective QF Program contract options should be extended to existing QFs as well as QFs that are, or were, on contract extensions set forth in D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009.



November 13, 2007

Mr. Brad Morris, Business Manager Watson Cogeneration Company (QFID 2053) 22850 South Wilmington Avenue P. O. Box 6203 Carson, CA 90749-6203

Subject:

Request for Extension of Power Purchase Agreement

Pursuant to CPUC Decision 07-09-040

Dear Mr. Morris:

Thank you for your letter dated October 29, 2007 providing notice of Watson Cogeneration Company ("Watson")'s intention to extend its existing Power Purchase Agreement ("PPA") with Southern California Edison Company ("SCE") consistent with the September 25, 2007 California Public Utilities Commission Decision 07-09-040 ("Decision").

SCE acknowledges that the Decision allows Watson to elect to extend certain terms and conditions of the PPA beyond the current expiration date of the PPA. We recently received materials from Watson's counsel asserting that the expiration date of the PPA is April 2008. We will review those materials. However, as previously discussed in our telephone conversations and meetings, SCE's current view is that the PPA expires on December 31, 2007 unless it is extended in accordance with the Decision.

Pursuant to the Decision and Watson's notice, beginning on January 1, 2008, the capacity price will be \$91.97/kW-year with performance standards of 95% of the contract capacity during on-peak months and 90% of the contract capacity during off-peak months (not counting scheduled outages). Also beginning on January 1, 2008, Watson will receive an energy payment consistent with the Decision.

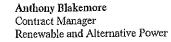
SCE reserves all of its rights, claims, defenses and remedies with respect to the Decision and the PPA.

If you have any questions regarding the above, please call me.

Sincerely.

David T. A

cc: Tom Lu, Watson Cogeneration Company





November 19, 2007

Mr. Neil Burgess
Sycamore Cogeneration Company (QFID 2058)
PO Box 80598
Bakersfield, CA 93380

Subject:

Request for Extension of the Amended and Restated Parallel Generation Agreement Pursuant to CPUC Decision 07-09-040

Dear Mr. Burgess:

Southern California Edison Company ("SCE") is in receipt of your letter dated November 13, 2007 providing notice of Sycamore Cogeneration Company ("SYCC")'s intention to extend its existing Amended and Restated Parallel Generation Agreement ("PGA") with SCE consistent with the September 25, 2007 California Public Utilities Commission Decision 07-09-040 ("Decision"). SCE acknowledges that the Decision allows SYCC to elect to extend certain terms and conditions of the PGA beyond the current expiration date of the PGA.

Pursuant to the Decision and SYCC's notice, beginning on January 1, 2008, the capacity price will be \$91.97/kW-year with performance standards of 95% of the contract capacity during onpeak months and 90% of the contract capacity during off-peak months (not counting scheduled outages). Also beginning on January 1, 2008, SYCC will receive an energy payment consistent with the Decision.

Please note that consistent with the language of the Decision and the PGA, SYCC is obligated to continue delivering 300 MW of Contract Capacity to SCE. Should SYCC wish to adjust the Contract Capacity, SCE is willing to discuss the terms of an amendment to the PGA that will provide commensurate ratepayer value.

SCE reserves all of its rights, claims, defenses and remedies with respect to the Decision and the PGA.

Should you have any questions, please contact me at (626) 302-9564.

Regards,

cc:

Gaylord Edwards, Sycamore Cogeneration Company

P.O. Box 800 2244 Walnut Grove Ave. Rosemead, CA 91770 626-302-9564/PAX 29564 Fax 626-302-9622 Anthony.Blakemore@sce.com

### MEMORANDUM

To Elizabeth Stoltzfus

From Michael Alcantar

Date November 13, 2007

Regarding Additional Terminated QF Contracts

As a follow-up to our exchanges yesterday I forwarded a copy of my communication about Mid-Set to the project's executive director. He alerted me to the fact that Chevron, who is a partner/owner of Mid-Set, have additional projects with PG&E whose firm supply PPA's expired and they were left with only the as-available SO1 contract option. The three projects he is directly aware of are in the following table:

QF Project	Contract Capacity (mW)	Firm Capacity PPA Expiration Date	PG&E SO1 Amendment Execution Date
Coalinga Cogeneration Company	33.0	3/4/2007	3/5/2007
Salinas River Cogeneration Company	33.0	3/5/2007	3/6/2007
Sargent Canyon Cogeneration Company	35.5	2/21/2007	2/22/2007

In addition to these three, I'm informed by another Chevron representative that there are two additional, small (less than 10 MW) facilities whose firm capacity SO2 contracts expired in 2005. I will provide you the information on those contracts and the request to reinstate their former firm non-price terms and conditions as soon as I have that information.

#### MEMORANDUM

To Elizabeth Stoltzfus

From Michael Alcantar

Date November 12, 2007

Regarding Retaining Firm Capacity Non-Price Terms for Expired Mid-Set

Cogeneration Company/PG&E Contract

This memorandum is to provide you with requested background information on the expired firm capacity contract between Mid-Set Cogeneration Company and PG&E. The purpose of this information is to support the reinstatement of Mid-Set's expired firm capacity non-price contract terms and conditions pending the development of an available firm capacity Standard Offer pursuant to D.07-09-040.

Mid-Set provided firm capacity to PG&E under an ISO4 that expired in May 2004. Under CPUC decisions PG&E offered only as available capacity SO1 extensions, beginning in 2003, for expired or expiring contracts. This was done in contemplation that the commission would shortly address a long term firm contract option for QFs. In the interim, Mid-Set, as a firm capacity resource, has only been able to provide power under an inapplicable as-available SO1 contract with PG&E.

The information below provides a summary of several issues. First, there is a historical listing of the development of the Mid-Set contracts and amendments. Second, there are relevant the passages from D.07-09-040 regarding the retention of firm capacity non-price terms for expired contracts. Finally, the precise recommendation referenced as "adopted" in D.07-09-040 made by CAC/EPUC is quoted for reference.

## A. History of the contract development for Mid-Set Cogeneration Company:

- 1. Original Interim Standard Offer No. 4 (ISO4) executed by PG&E June 28, 1985 (electronic copy of the first portion of the original ISO4 attached).
- Expiration/termination date of the original firm capacity ISO4 May 18, 2004; during its term and thereafter until today Mid-Set continues to provide firm capacity to PG&E.
- 3. CPUC Decision 03-12-062 orders SO1 "bridge" contracts for expiring or expired contracts for a period until December 31, 2004 (QF must have been in operation and under contract that expired between January 1, 1998 and December 18, 2003); Mid-Set qualifies for an SO1, but seeks a firm capacity contract and PG&E rejects option in light of CPUC decision.

- Mid-Set executes PG&E's SO1 amendment under as-available capacity terms as an extension while continuing to deliver firm capacity (electronic copy of the SO1 amendment attached).
- 5. CPUC Decision 04-01-050, January 26, 2004, orders further extension of "bridge" SO1 contract for 5 year terms, but no firm capacity contract yet established.
- 6. Mid-Set executes PG&E extension amendment under CPUC Decision 04-01-050 (electronic copy of the SO1 contract amendment attached).

Mid-Set had no available option to provide its QF power on a firm basis with PG&E at the expiration of its original ISO4. The commission had not yet determined the policy direction for extensions of long term contracts. The only available option for Mid-Set was to execute the as-available "bridge" SO1 contract amendment directed by the CPUC and presented by PG&E. Significantly Mid-Set is not an as-available resource, but the only available contract is an SO1.

## B. D.07-09-040 references to continuing existing firm non-price contract terms:

- P. 126 In recognition of the often lengthy process involved in negotiating contract terms, we will adopt CAC/EPUC's recommendation for existing firm capacity QF resources whose contracts expire before the contracts required by this decision are available. The QF may extend the non-price terms and conditions of the expiring contract and continue service with the pricing set forth in this Decision until the final contract is available.
- P. 148 FOF 45. It is reasonable to extend our prospective QF Program contract options to QFs that are, or were, on contract extensions approved in D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009.
- P. 148 FOF 46. It is reasonable to allow QFs with expiring contracts to extend the non-price terms of their agreements and continue to provide service under the pricing set forth in this decision until such time as the prospective QF Program contracts options are available.
- P. 150 -- COL 20. The prospective QF Program contract options should be extended to existing QFs as well as QFs that are, or were, on contract extensions set forth in D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009.

These passages from the order direct the extension of non-price terms for QFs who's "contracts expire before the contracts required by this decision are available." Mid-Set's firm capacity contract expired in May 2004, and reinstatement of the firm capacity non-price terms and conditions are appropriate under the current circumstances.

### C. CAC/EPUC contract extension recommendation from filings:

## STANDARD OFFER CONTRACT IMPLEMENTATION OPTIONS ARE CRITICAL

The SO contract contemplated in the Alternate is unlikely to be implemented before the end of 2007. CAC/EPUC have presented several options to the Commission to expedite the adoption of a final SO contract, including providing a fully integrated SO contract consistent with the Alternate. But we must be realistic, and timing is essential for certain projects.

There are at least two major firm capacity CHP resources that will face contract termination claims from SCE on January 1, 2008. Others will soon follow. These resources, like other firm capacity suppliers before them, will have little option to secure reasonable contract terms and conditions until the Commission approves a SO contract. These facilities, like those before them, are prejudiced by the lack of a secure CHP long term contract policy. There is a straightforward solution. The Commission should issue the following order:

- For firm capacity CHP QF resources whose contract terminated during or reasonably before this lengthy proceeding the QF may revert/reinstate the non-price terms and conditions of the previously expired firm capacity contract until the final SO contract is adopted;
- For firm capacity CHP QF resources whose contract terminates before the SO contract is adopted, the QF may retain the non-price terms and conditions of the terminating firm capacity contract until the final SO contract is adopted.

The LRAC pricing conditions, once established by the Commission after the post decision workshop, would be incorporated into these existing contracts. This measure would set firm contracts for firm resources, and provide a fair bridge contract pending adoption of the SO contract.

This remaining implementation issue is the singularly most critical matter for the CAC firm capacity resources in this proceeding.

#### D. Conclusion

Mid-Set is a firm capacity resource. It should now, under the commission's recent decision be able to secure a firm capacity contract. It had no such option in the past. It is fair and appropriate to reinstate the firm capacity non-price terms until the Standard Offer for firm resources is available under D.07-09-040.

## **CERTIFICATE OF SERVICE**

I, Karen Terranova hereby certify that I have on this date caused the attached **Notice of Ex Parte Communication** in R04-04-003/R04-04-025 to be served to all known parties by either United States mail or electronic mail, to each party named in the official attached service list obtained from the Commission's website, attached hereto, and pursuant to the Commission's Rules of Practice and Procedure.

Dated November 26, 2007 at San Francisco, California.

Karen Terranova

Lare Terranon

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